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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,812	02/03/2004	Bruce E. Marlin	1503.150np	9546

23294 7590 01/12/2007
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EXAMINER

LUKS, JEREMY AUSTIN

ART UNIT	PAPER NUMBER
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2837

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/769,812	Applicant(s) MARLIN, BRUCE E.	
	Examiner Jeremy Luks	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Novitschitsch (6,457,547) in view of Brown (3,531,602). Novitschitsch teaches a compact loudspeaker (Figure 2) adapted for installation in a partition comprising a loudspeaker driver (1) including a diaphragm suspended in a supporting flange structure (Figure 1, #39) proximate the driver (1) proximal peripheral edge, said driver (1) diaphragm having a proximal surface and a central axis (see axial dotted line through the center of the apparatus in Figure 2); said driver (1) further including a motor structure including a magnet (41) and an axially aligned pole piece (See unlabeled pole portion between magnet #41 and loudspeaker #1 within the central axis). Novitschitsch fails to teach a control switch connected to said loudspeaker and configured to control a signal passed to the loudspeaker driver, said switch being actuable using an elongate switch shaft having a proximal end, said shaft passing through said pole piece and said driver diaphragm whereby said shaft proximal end projects proximally beyond said driver diaphragm proximal surface; and wherein said control switch is carried on a distal back plate of said motor structure and is configured to control the amplitude of said signal

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passed to the loudspeaker driver; and wherein said control switch is configured to control the input power level of said signal passed to the loudspeaker driver. Brown teaches a control switch (Figure 2, #13) connected to a loudspeaker (6) and configured to control a signal passed to the loudspeaker driver (Col. 1, Lines 55-61), said switch (13) being actuable (via knob #5) using an elongate switch shaft (15) having a proximal end, said shaft (15) passing through a driver diaphragm (7) whereby said shaft (15) proximal end projects proximally beyond said driver diaphragm (7) proximal surface; and wherein said control switch (13) is carried on a distal back plate of a motor structure (11) and is configured to control the amplitude or input power level of said signal passed to the loudspeaker driver (7) (Col. 1, Lines 36-38). Brown acknowledges that it is well known in the art to pass the control switch through the speaker magnet (Col. 1, Lines 38-42), which if used in combination with Novitschitsch would the said shaft (15) pass through said pole piece of Novitschitsch and said driver diaphragm (7). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Novitschitsch, with the apparatus of Brown to provide a convenience of front panel operation of the speaker controls.

2. Claims 5 and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novitschitsch (6,457,547) in view of Brown (3,531,602) as applied to claim 1 above, and further in view of Lamm (6,164,408). Novitschitsch teaches including a back can (Figure 2, #3) having a central axis that is coaxial with said driver central axis (see axial dotted line through the center of the apparatus in Figure 2); said back can (2) having a proximal opening adapted to receive said driver (1), wherein said driver (1) is

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carried in said back can (2) by the driver (1) supporting flange (7) peripheral edge; said back can (2) also having a solid side wall (4) and a solid rear wall (3) defining the back can (2) exterior surface and carrying a plurality of electrically conductive connectors (8 – see the two connection portions making up plug #8) having conductive poles (see the two pole portions within connectors of plug #8) aligned in a linear array; wherein said back can (Figure 2, #2) exterior surface (6) includes at least one swing-out fastener (16) carried on said back can (2) exterior surface (6) proximate a proximal outwardly projecting peripheral flange (Figure 2, #7); and wherein said electrically conductive connectors (8 – see the two connection portions making up plug #8) are carried on a distal portion of said back can (Figure 3, #2) exterior surface (6). Novitschitsch fails to teach wherein said selector switch and a multi-tap transformer are enclosed within said back can; wherein said switch and said driver are connected with at least one electrical conductor; wherein said multi-tap transformer and said switch are connected with a plurality of electrical conductors; wherein said multi-tap transformer and said electrically conductive connectors are connected with at least one electrical conductor; wherein said control switch shaft proximal end carries an input power level selector knob; wherein said control switch is configured to select one transformer tap among a plurality of available taps for controlling said signal passed to the loudspeaker driver; wherein said electrically conductive connectors comprise four conductive poles aligned in a linear array. Brown teaches wherein said switch (Figure 1, #13) and said driver (6) are connected with at least one electrical conductor (see wires protruding from center portion of receiver chassis #11); and said control switch shaft (15) proximal end carries

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an input power level selector knob (5). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Novitschitsch, with the apparatus of Brown to provide a convenience of front panel operation of the speaker controls. Brown fails to teach wherein said selector switch and a multi-tap transformer are enclosed within said back can; wherein said multi-tap transformer and said switch are connected with a plurality of electrical conductors; wherein said multi-tap transformer and said electrically conductive connectors are connected with at least one electrical conductor; wherein said control switch is configured to select one transformer tap among a plurality of available taps for controlling said signal passed to the loudspeaker driver; wherein said electrically conductive connectors comprise four conductive poles aligned in a linear array. Lamm teaches wherein a selector switch (Figure 3, #36) and a multi-tap transformer (34) are enclosed within a back can (38); wherein said multi-tap transformer (34) and said switch (36) are connected with a plurality of electrical conductors (Col. 7, Lines 39-43); wherein said multi-tap transformer (34) and said electrically conductive connectors are connected with at least one electrical conductor (Col. 7, Lines 35-43); wherein said control switch (36) is configured to select one transformer tap among a plurality of available taps for controlling said signal passed to the loudspeaker driver or exciter (14) (Col. 4, Lines 44-46; Col. 7, Lines 39-43). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Novitschitsch as modified, with the apparatus of Lamm to correctly match the impedance of the speaker with the input signal for the purpose of adjusting the overall volume. Lamm fails to teach wherein said electrically

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conductive connectors comprise four conductive poles. However, It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide electrically conductive connectors comprising four conductive poles, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

3. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novitschitsch (6,457,547) in view of Brown (3,531,602) as applied to claim 1 above, and further in view of Lesage (5,875,252). Novitschitsch and Brown are relied upon for the reasons and disclosures set forth above. Novitschitsch and Brown fail to teach wherein said control switch shaft proximal end carries a radiation uniformity enhancing phase plug. Lesage teaches a shaft (Figure 1, #18) proximal end carries a radiation uniformity enhancing phase plug (16) (Col. 5 Lines 37-44). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Novitschitsch as modified, with the apparatus of Lesage to improve the sound quality of the speaker.

Response to Arguments

4. Applicant's arguments filed 11/15/06 have been fully considered but they are not persuasive. The Examiner considers the prior art of record to teach all of the limitations as claimed by Applicant.

5. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

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USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). With respect to pending claims 1-14 and 20, the Examiner has used specific features from the Novitschitsch, Brown, Lamm and Lasage that when combined as stated above teach Applicant's claimed invention. Applicant has suggested that incorporating the secondary references of Brown, Lamm and Lasage into the Novitschitsch would not teach Applicant's invention, but a "hybrid or composite." The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, all of the features as claimed by Applicant are present in the prior art references and when those specific features are combined as described above, meet all of the claimed limitations. Additionally, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

6. With respect to the argument that structural elements would not be lined up properly, it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

7. In response to applicant's argument suggesting the only possible resulting structures from the prior art combinations, a recitation of the intended use of the claimed

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invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

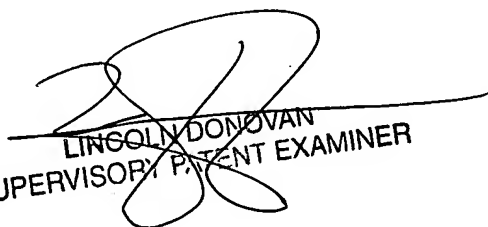
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks
Patent Examiner
Art Unit 2837
Class 181


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